The court found that the parties had knowingly entered into a speculative contract and that, although the event turned out very different from what was anticipated, nevertheless this miscalculation was not such a mistake as would entitle the disappointed party to relief. (*Pomeroy's Equity*, Sec. 855, 2 ed.) The two compromises of disputed claims are final and will be sustained by the courts without regard to validity of the claims. *Welthrum* v. *Kuhan*, 61 N. Y. 623; *Craus* v. *Hunter*, 28 N. Y. 389.

LANDLORD AND TENANT—LEASE—REESE, ET AL., V. ZINN, ET AL., 103 Fed. Rep. 97.—A lease so worded as to permit the lessee to determine it. *Held*, void for lack of mutuality.

The court holds that a clause to this effect in the lessee's favor confers the same power upon the lessor, thereby destroying the enforceability of the contract. *Kelly* v. *Waite*, 22 Metc. (Mass.) 300. *Guffey* v. *Herkill*, 34 W.Va. 49. 12 A. & E. 757.

LEGAL HOLIDAY—NEW YEAR'S DAY—PAGE V. SHARNWALD—65 N. Y. Supp. 174.—Defendant was obliged to make a tender on January 1st, declared by law to be a legal holiday. *Held*, it was not a *dies non* for making the tender and applied only to dealings in commercial paper, opening of public offices, etc.

MASTER AND SERVANT—FELLOW SERVANTS—INJURY TO EMPLOYEE—STUBER V. LOUISVILLE & N. R. Co., 102 Fed. 421.—A skilled machinist employed by the railroad to keep its pumps, tanks, and wells in condition, is not a fellow servant with the engineer.

The injured machinist was riding on the defendant's train in order to reach a point where he was to go to work, and was injured. If the court had found him injured while working on a tank near the railroad it might have found him a fellow servant under the decision in *Morgan* v. *Vale of Neath Ry. Co.* L. R., 1 Q. B. 149. But his injury was incurred while on the way to work, not while engaged in work. This establishes a distinction whose soundness is not unquestioned.

MASTER AND SERVANT—FELLOW SERVANTS—TRAIN DISPATCHER AND TRAINMEN—MISSOURI, K. & T. RY. V. ELLIOTT, ET AL., 102 Fed. 96.—*Held*, that a train dispatcher is not a fellow servant with the employees operating such trains.

The question of fellow servants is ably discussed from both sides in this case. It is hard to see how a train dispatcher is in such a position as to have us consider him an *alter ego* of the company. Yet this is the view of the majority. He does not represent his master any more than the engineer does in his line, nor is he at the head of a department. A consideration of the principles on which is based this doctrine of fellow servants would seem to favor the views of the dissenting judge. *R. R.* v. *Peterson*. 162 U. S. 346; 166, U. S. 399.

PHYSICIAN—SUIT FOR SERVICE—EBNER V. MACKEY, 57 N. E. (Ills.) 834—The plaintiff in this case had acted as physician for the husband of the defendant covering a period of several years before the death of the defendant's husband. The plaintiff brought suit for services rendered. The defendant refused payment on the ground that the plaintiff's visits were of unnecessary frequency and hence his claims were exorbitant. *Held*, that a physician ought to be the sole judge of the necessary frequency of his visits, and need not prove the necessity for making them in order to get compensation.

This decision is clearly right in principle. A physician being responsible for the want of care and faithful attention to his patients, a contrary rule would

work great hardship to him. Then so long as the party employing does not discharge him or require him to come less frequently, he cannot afterwards complain of the frequency of his visits. *Wood on Master and Servant*, Sec. 177; *Todd* v. *Myres*, 40 Cal. 357.

PRINCIPAL AND AGENT—FALSE IMPRISONMENT—SCOPE OF AUTHORITY—DUPRE V. CHILDS, 65 N. Y. Sup. 179.—Defendant owned a restaurant in New York city. One of its rules prohibited its patrons from passing out without stopping at the cashier's desk. Plaintiff who had not been served passed out, knowing nothing of the rule, was followed by defendant's manager and caused to be arrested. *Held*, the act was within the scope of the agent's authority and principal was liable, although agent's instructions were not to leave the restaurant. *Mott* v. *Ice Co.*, 73 N. Y. 543; *Palmer* v. *Railway Co.*, 133 N. Y. 261. Two judges dissent, citing *Mulligan* v. *R. R. Co.*, 129 N. Y. 506, on the ground that it is not within the scope of the agent's authority.

RAILROADS—EJECTING TRESPASSERS—AUTHORITY OF BRAKEMAN—COLLUSION—CARE OWING TRESPASSER—NEGLIGENCE—TEXAS & P. RY. CO. V. BLACK, 57 S. W. 330 (Tex.).—Frank Black, a negro, paid regular fare to brakeman who consented that he should ride but later ordered him from the freight train. On refusing to leave the train the brakeman knocked Black off. *Held*, that the Ry. Co. was liable for the resulting injuries. Stephens, J., dissenting.

In *Ga. Ry. & B. Co.* v. *Wood*, 94 Ga. 124, it was held that throwing stones at trespassers was not in scope of brakeman's duty; in *Rounds* v. *D., L. & W. Ry. Co.*, 64 N. Y. 129, the jury was to decide whether or not the kicking of a passenger from a moving train was within a baggageman's authority; while in the case at bar the court says absolutely that the ejection was within the actual scope of the brakeman's employment. However, the court held that considerations of humanity imperatively demand that railways so conduct their business as not unnecessarily to injure even the trespasser. *R. R. Co.* v. *Grisley*, 35 S. W. 815; *R. R. Co.* v. *Bellew*, 54 S. W. 1079.

The defense of collusion was not allowed because not pleaded specially. Two recent cases give a fine discussion on collusion of this nature:—*Brewing* v. *R. R. Co.*, 66 N. W. 403 (Minn.); and *R. R. Co.* v. *Anderson*, 25 South. 865.

REGULATION FOR PROTECTION AGAINST CONTAGIOUS DISEASES—CONSTITUTIONALITY—WONG WAI V. WILLIAMSON, ET AL., 103 Fed. 1.—The Board of Health of San Francisco forbid any Chinese or Asiatic person from leaving the city without first submitting to inoculation for the bubonic plague. *Held*, to be an unconstitutional invasion of the rights of the persons against whom it was directed.

The decision is based on the belief that the above regulation is not a necessary one to protect the health of the city. There is nothing in the decision to deny the well established rule that a health board has power to enact proper rules and regulations of this sort. As a decision it simply shows that courts will not allow its abuse. The court looks upon it as an oppressive discrimination against the Chinese and further, as no consideration is taken as to whether they have had the plague or have been exposed to it. The decision is the result of careful, logical distinctions. While from a legal point of view they can not but be commended, yet they might result disastrously in their practical results.

TOWN BONDS—VALIDITY—BONA FIDE HOLDERS—CITIZENS SAVINGS BANK V. TOWN OF GREENBURG, 65 N. Y. Supp. 554.—Defendant town issued interest-bearing bonds and delivered them to commissioners appointed by the Supreme Court who had power under a statute to sell them at not less than par. The bonds were sold to a New York firm for their face value, but upon credit, and